UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

FERRIS JOSEPH,	)	Civil No 06-4143
Plaintiff,	)	
Vs.	)	
CORPORATION OF THE PRESIDENT CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF LATTER-DAY SAINTS, a Utah corporation sole,	)	FORM 35 REPORT
Defendants.	)	

A. Date and Place of the Meeting and Identification of the Parties, and their Attorneys.

1. The date and place at which the meeting was held.

A meeting between the Plaintiff and Defendants was held telephonically on October 18, 2006.

2. Name and address of the attorney or attorneys who represent each party at the meeting.

Stephanie E. Pochop
Johnson Eklund Law Office
PO Box 149
Gregory, SD 57533
(605) 835-8391
Attorney for Plaintiff

James McMahon
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Sioux Falls, SD 57101-1293
(605) 332-5606
Attorney for Defendants

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3. Name of the insurance carriers and amount of liability coverage available.

Defendants are self-insured.

B. Description of the Case

4. A brief narrative of the facts giving rise to the lawsuit, including a description of legal claims and defenses.

Joseph claims that beginning in 1967, he was subjected to repeated childhood sexual abuse by Elder Richard Joseph White while White was a missionary serving the Defendants on an assignment to mission work in South Dakota. Joseph alleges that the Defendants knew or should have known that White was a pedophile but did nothing to supervise or otherwise protect Joseph from childhood sexual abuse; Joseph further alleges that the Defendants fraudulently concealed information pertinent to Plaintiff's claims in order to protect itself from civil liability. Plaintiff asserts that he has suffered permanently emotional and spiritual injuries as a result of the childhood sexual abuse he endured.

Defendants deny that Plaintiff was abused, deny that they were responsible for any abuse if it did happen and deny that Elder Richard Joseph White abused the Plaintiff. Defendants raise a number of affirmative defenses including the affirmative defense that Plaintiff's case was not timely brought.

5. A concise statement of the jurisdictional basis of the case, giving a brief narrative description as well as statutory references number.

Jurisdiction is pursuant to 28 USC § 1332 and based upon the diversity of the parties and the amount of damages in controversy.

6. A brief statement of the material issues to be resolved.

1. **Whether Plaintiff was sexually abused as a minor?**
2. **Whether Defendants knew or in the exercise of reasonable care should have known that the perpetrator was unfit, dangerous and/or a threat to the health, safety and welfare of minors, including Joseph, with whom he would come into contact within the course of his duties as a Church Elder and missionary?**
3. **Whether Defendants exercised reasonable care in recruiting, hiring, retaining, assigning and/or supervising the perpetrator?**
4. **When did Plaintiff discover the causal connection between the childhood sexual abuse he endured and his resulting emotional injuries and conditions?**

5. **The amount of Plaintiff's compensable injuries, if any.**
6. **Whether the Plaintiff's complaint is barred by the statute of limitations, waiver, estoppel, or laches?**
7. **Whether the Defendant Corporation of the Presiding Bishop of the Church of Latter-Day Saints, a Utah corporation sole, is a proper party defendant?**
8. **Whether the Defendants can be held vicariously liable for alleged acts of other persons?**
9. **Other issues raised by affirmative defenses.**

C. Pleadings

7. A statement of whether all pleadings have been filed, and description of any amendments to the pleadings the party proposes to make including the identification of any new parties to be added (if none so state).

All pleadings have been filed to date.

8. The date by which all motions which seek to amend the pleadings or add parties will be filed.

The parties will file any amendments to the pleadings within 30 days from the filing of the Form 35 report.

9. Whether jury trial is available under the law, and whether a jury trial has been timely demanded.

A jury trial is available; Plaintiff has timely demanded a jury trial.

D. Discovery Plan

10. Date by which all prediscovery disclosures required by Rule 26(a)(1) will be completed.

Rule 26 disclosures will be exchanged within 30 days from the filing of the Form 35 Report.

11. The number of interrogatories each party shall be permitted to serve.

25 for Plaintiff
25 for Defendant

12. The number of depositions each party shall be permitted to take (excluding expert witness depositions.)

15 depositions.

13. The date by which all discovery (including expert discovery) shall be completed.

July 31, 2007.

14. A statement of how many, if any, expert witnesses each party anticipates calling at trial, and a brief (one or two words) description of the type of experts anticipated, e.g. medical doctor, economist, accident reconstructionist, accountant.

Plaintiff: 2 experts: an economist and a psychiatrist
Defendant: 1 responsive expert for each expert called by plaintiff.

15. The date by which each party shall disclose the identity of expert witnesses and disclose the reports required under Rule 26(a)(2).

December 29, 2007 for Plaintiff
March 16, 2007 for Defendant

16. Whether the parties anticipate expert depositions.

Yes.

17. The number of expert deposition each party shall be permitted to take.

One deposition for each expert identified.

18. The frequency with which discovery responses must be supplemented pursuant to Rule 26(a).

Discovery will be supplemented in a timely fashion when new discovery becomes available as required by the discovery rules but no later than 60 days before trial.

E. Dispositive Motions and Trial

19. Date by which all dispositive motions shall be filed and the hearing thereon completed.

45 days after the close of discovery.

20. Date by which the case will be ready to commence trial.

The case will be ready for trial within 30 days of the Court's ruling on any dispositive motions.

21. Estimated trial time including jury selection and instructions.

The parties estimate that the case will take up to 5 days to try.

22. Do the parties agree that the jury trial as well as all other proceedings subsequent to the return of the Rule 35 Report be conducted by Magistrate Judge John E. Simko?

Yes.

F. Settlement

23. The parties should fully explore the possibility of settling this case at the Rule 26(f) meeting. If the case does not settle, the parties shall be fully prepared to advise the court about the status of settlement discussions.

The parties are actively exploring settlement negotiations.

24. Plaintiff is directed to make a written settlement demand prior to the Rule 26(f) meeting. Defendant shall respond in writing to this demand as soon as possible.

Plaintiff will prepare a written settlement demand to be sent to the Defendant no later than 30 days after the exchange of Rule 26 disclosures.

25. If the Plaintiff is unable to make a settlement demand, Plaintiff shall be fully prepared:

26. To explain the inability; **N/A**

27. To advise the Court what is needed to evaluate settlement;

The parties need to exchange Rule 26 disclosures in order to evaluate their respective settlement positions.

28. To advise the Court of the earliest date the parties can realistically evaluate settlement.

The parties believe the earliest settlement can be evaluated is 30 days after the exchange of Rule 26 disclosures.

29. What reason or reasons are there that this case cannot be settled in the early stages of litigation.

The parties believe the case may be able to settle in the early stages of litigation; however the parties will be able to more accurately assess early settlement potential after the exchange of Rule 26 disclosures.

30. Would an early settlement conference before Judge Simko be of assistance in reaching an early settlement? If not, why not?

Yes, the parties believe an early settlement conference may be of assistance in reaching settlement.

DATED this 18th day of October, 2006.

__s/ Stephanie Pochop____ _
Stephanie E. Pochop
JOHNSON EKLUND LAW
PO Box 149
Gregory, SD 57533
(605) 835-8391
Attorney for Plaintiff

DATED this 18th day of October, 2006.

McMAHON LAW OFFICE, P.C.

__/s/ James E. McMahon_________
James E. McMahon
101 North Phillips Avenue, Suite 408
Post Office Box 1293
Sioux Falls SD 57101-1293
(605) 332-5606
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned attorney for the Plaintiff that on the __18th___ day of October, 2006, a copy of the FORM 35 REPORT was electronically filed and mailed by United States mail, first-class, postage pre-paid, to:

James E. McMahon
McMahon Law Office, P.C.
Post Office Box 1293
Sioux Falls SD 57101-1293

attorney for Defendants; that said mailing was by first class United States mail.

_____S/ *Stephanie E. Pochop*_______
Stephanie E. Pochop